court it was held differently, and that her credit is nothing in the eyes of the law.

We adhere to the settled doctrine that it is only when the property acquired after marriage has been paid for with her own separate estate, clearly and satisfactorily established, it is hers, and is protected from her husband's creditors. To suffer a wife to purchase on credit, is to open a wide door for fraud. Its effect is to throw upon the creditors the burden of proving whose funds afterwards enter into the payments. For, starting with title founded on her credit, she must stand upon it until the husband's means can be shown to enter into the purchase.

The judgment is affirmed.

Supreme Court of Missouri.

THE OHIO AND MISSISSIPPI RAILROAD COMPANY, RESPONDENT, *vs.* WILLIAM M. M'PHERSON, APPELLANT.

The directors are the agents of the corporation, and not the corporation itself; and although they meet without the limits of the state creating the corporation, yet their proceedings will be valid and binding upon the company. Where the charter granted by the state of Illinois declared certain persons to be a corporation, and named the directors thereof, such directors could meet and act in the state of Missouri.

Where the directors named in the act of incorporation met and organized the company without the limits of the state granting the charter, one who has subscribed for the stock of the corporation by its corporate name, and paid instalments called for by the directors, is precluded by his own acts from denying the lawful existence of the corporation.

Where the corporators met without the limits of the state granting the charter, and elected a board of directors, and such board made a call for payment upon the subscription to the stock of the corporation, a subscriber to the stock cannot, when sued for the call thus made, object to the legality of such election. The parties thus elected are directors *de facto*, and the legality of their election cannot be inquired into collaterally, without showing a judgment of ouster against them in a direct proceeding for that purpose by the government creating the corporation.

This suit was commenced the 28th November, 1858, and was for the recovery of $1400 and interest, being a balance of the larger sum of $2000, subscribed by the appellant on the 28th of March, 1851, to the capital stock of the Ohio and Mississippi

Railroad Company, the respondent. There seems to be no dispute about the facts in the case, but about the law arising upon them. The facts as disclosed by the record, so far as are material to the questions arising, are as follows:—

The plaintiff was incorporated by an Act of the Legislature of the state of Illinois, approved February 12th, 1851; by the first section of which the persons named therein, "and such other persons as might associate with them for that purpose, are hereby made and constituted a body corporate and politic by the name and style of The Ohio and Mississippi Railroad Company, with perpetual succession," &c. The purpose of the corporation was the construction and operation of a railroad commencing at Illinoistown, on the east bank of the Mississippi, running thence to the east line of the said state in the direction of the city of Vincennes, in the state of Indiana. The act of incorporation vested the corporate powers of the company in a board of directors, to consist of not less than seven nor more than seventeen in number, and such other officers, agents, and servants as they should appoint; and named the first board, consisting of thirteen persons, who, by the provisions of the act, were to hold their offices until their successors should be elected and qualified; and provided that vacancies in the board might be filled by a vote of two-thirds of the directors remaining, the appointees to continue in office until the next regular annual election of directors, which was required to be held on the first Monday of September in each year, at such place as the directors might appoint. A meeting of the board appointed in the charter was held in the city of St. Louis, Missouri, on the 28th of March, 1851, at which certain rules and regulations as to the rights and duties of stockholders (not necessary to be detailed here) were adopted, and a form of obligation was prescribed, to be signed by subscribers for stock in the company. The following is the form of obligation thus prescribed, and is the same which was subscribed by the defendant, and on which this suit was brought, viz.:—

"We, whose names are subscribed hereto, do promise to pay to the Ohio and Mississippi Railroad Company, incorporated by the state of Illinois, the sum of fifty dollars for every share of stock set opposite to our names respectively, in such manner and proportions and times as shall be determined by such company in pursuance of the charter thereof, and of the preceding resolutions of the board of directors. Witness the day of , A. D. 18 ."

Four calls for payment of subscriptions to stock were ordered by the board, all at meetings of the board in the city of St. Louis; the first on the 25th of September, 1851, for two and a half per cent.; the second on the 19th of November, 1851, for seven and a half per cent.; the third on the 5th of August, 1852, for thirty per cent., and the fourth on the 12th of August, 1853, for the remainder (sixty per cent.), to be paid in instalments of five per cent. on and after the 1st of October, 1853, till fully paid, of which several calls the appellant had due notice. At the meetings of the board at which the first and third calls were ordered, there were present six of the thirteen members appointed in the charter, with, in one instance, one, and in another, two appointees of the charter members; the second call was ordered by a meeting of seven of the charter members, and two of their appointees; the fourth call was ordered by a meeting of directors, elected at a stockholders' election held in the city of St. Louis on the 6th of September, 1852—none of the directors in this meeting being charter directors. The appellant paid to the respondent on his liability arising upon his said subscription, on the 22d of March, 1852, the sum of $100, and on the 3d of September, 1853, the further sum of $500; and in an interview had between the defendant and the treasurer of the company on the subject of the appellant's said liability, after the year 1855, and after the completion of the road, he admitted his liability, and expressed his willingness to pay when called on. A meeting of the stockholders of the company was held in St. Louis on the 4th of September, 1854, in the proceedings of which the appellant participated, voting with the majority in the adoption of measures looking to the accomplishment of the objects of the corporation. The avails of stock sold were used in building the road, and the road was completed on the 30th of June, 1855.

J. R. Shepley, for appellant.—A corporation authorized to be constituted under an Act of the Legislature cannot accept any agreement payable to it, or for its benefit, until the prerequisites have been performed to give it a corporate existence: *Wilm. & M. Railroad* vs. *Wright*, 5 Jones Law Rep. 304.

All votes and proceedings of persons professing to act in the capacity of corporators, when assembled beyond the bounds of the state granting the charter of incorporation, are wholly void: Ang. & Ames on Corporations, § 498; *Runyan* vs. *Coster's Lessees*,

14 Pet. 128; *Miller* vs. *Ewer*, 27 Me. 509; *Freeman* vs. *Machias W. & M. Co.*, 38 Id. 243; *Ohio & Mississippi Railroad Co.* vs. *Wheeler*, 1 Black, U. S. 286; *Bank* vs. *Adams*, 1 Pars. Sel. Cas. 548; *Bank of Augusta* vs. *Earle*, 13 Pet. 519.

If a corporation has no legal existence, or if any acts of a corporation are void, no act of a corporator or stockholder can give vitality to the one, or legalize and make valid the other.

There have never been any legal and valid calls upon the defendant for his subscription, or at any rate for that portion which still remains unpaid, even conceding that the board in the charter named were in existence; for,

1. All the calls were made at meetings of the board held in the city of St. Louis.

2. The third call was not made by a majority of the directors named in the charter. A majority of the board must be present to do any act: Ang. & Ames on Corp., § 501.

3. The fourth call was made when not a single member of the board of directors named in the charter was present, and only six members present. As the defendant has paid thirty per cent. of his subscription, it is entirely unimportant whether the first two calls, together only amounting to ten per cent., were legal or not. That has been paid, and an amount more than the twenty-five per cent. mentioned in the charter has been paid, so that, as to the calls, the question is narrowed down to the legality of the third and fourth calls, and about these it does not seem that there can be any serious question as to their invalidity.

S. T. Glover, for respondent.—The statute of Illinois (Sess. Acts of Ill. p. 89, 1851) created a corporation *per se*. Section 1 of this statute declares that certain persons "are thereby constituted a body corporate and politic by the name and style of The Ohio and Mississippi Railroad Company." Section 6 of the same statute (p. 92) appoints a board of directors, and vests in them "all the corporate powers of the company." Such a charter gave being to the corporation in perfect form the moment the persons named proceeded to use the granted franchises.

The directors who were appointed by the charter being legal directors, and the corporation having attained perfect existence, and being put fully into operation by their doing the work contemplated by the charter, it is immaterial whether subsequent directors were regularly and legally chosen or not. Any direct-

ors coming in by consent or acquiescence, and acting *colore officii*, would be *de facto* directors, and their acts would be valid: 4 Rawle 9; 12 Wheat. 70; Ang. & Ames on Corp., t. p. 104–5, and the cases there cited.

But there was nothing in the objection that the directors or corporators held their meetings in Missouri: 6 Conn. 429; 3 Duer 648; 14 Pet. 122. No good reason can be given for prohibiting such action: 13 Pet. 519. 27 Maine 509 is in point for defendant as to proceedings by a board out of the state being void. This case was ruled on a mistaken view of 13 Pet. 588. No reason has ever been advanced why a board cannot sit out of the state, while every other act can be done there.

The defendant, by contracting with the company, and by participating in the proceedings of the corporation, voting his stock, &c., is estopped to deny the corporate existence: 5 Ala. N. S. 807–8; 16 Mass. 87; 16 S. & R. 145. "If defendant accepted the charter and acted on it, * * * * it does not lie in his mouth to object:" 2 Mo. 137.

Irregularities and defects in organization, whether material or immaterial, cannot be drawn into view by a debtor as a defence to calls: 16 B. Mon. 7, 471; Redf. on Railroads 85; Id. 9; 1 Sandford 168; Ang. & Ames 85, 636; 16 Ala. 374; 16 S. & R. 145; 9 Wend. 351; 4 Denio 392; 27 Penn. 387; Grant on Corp. 292.

W. Homes, on the same side.

The opinion of the court was delivered by

DRYDEN, J., who, after stating the facts already set forth, proceeded:—A recovery in this case was resisted on two grounds: first, that the facts were insufficient to show an acceptance of the charter, and therefore the plaintiff was not shown to have any corporate existence; secondly and mainly, that the votes and proceedings of the stockholders and directors when assembled in St. Louis, beyond the bounds of the state granting the respondent's charter, were wholly void, and therefore that the calls which were ordered in St. Louis, and in one instance by a board elected in St. Louis, were invalid, and imposed no obligation on the appellant to respect them.

1. As to the corporate existence of the respondent. It is maintained by the counsel for the appellant, that no acts of the board of directors performed beyond the territorial limits of the

state from which the charter emanated could be a valid acceptance of the charter. In support of this position reliance is had chiefly on *Miller* vs. *Ewer*, 27 Me. 509. That was a writ of entry for a tract of land in which the demandants derived their title from the Bluehill Granite Company, incorporated by an Act of the Maine Legislature. On the trial it appeared that the meeting of the corporators was called for the organization of the corporation under its charter in the city of New York, and that the charter was there accepted, and the officers of the corporation (president, directors, and secretary) were chosen. At a meeting of the directors thus elected, held in the city of New York, a resolution was adopted directing the president and secretary to execute the conveyance under which the demandants claimed title. There was no proof that any meeting for the organization of the company, or for the choice of its officers, had ever been holden in the state of Maine; but there was proof that the company, by a person acting as its agent, transacted business in the state. The question involved in the case involved the validity or invalidity of the conveyance thus made by the president and secretary in behalf of the company. The court decided it was void, but placed its decision not on the ground that the board of directors ordering the execution of the conveyance met at a wrong place, but alone on the ground that the election of the directors by the stockholders having been held outside of the state, and because held out of the state was void, and gave the directors thus chosen no legal authority to convey or to direct the conveyance of the corporate property. The opinion in the case, while it denies extraterritorial power to corporators, concedes it to directors. The court says: "The directors of a corporation are not a corporate body; they are, when acting as a board, but a board of officers or agents, and they may exercise their powers as agents *beyond the bounds where the corporation exists*." In the present case the charter created a corporation *in presenti*, and appointed a board of directors without the necessity of any action on the part of the corporators; and if any assent was necessary to infuse life into this body politic, the proceedings of these directors, although had beyond the bounds and limits of the state of Illinois, were, according to the authority quoted, a sufficient expression of that assent.

But aside from the question whether the action of the board of directors beyond the bounds of the state was a sufficient ex-

pression of assent to give vitality to the corporation, the appellant's position towards the respondent is such as ought to preclude him from denying its corporate existence. The case of *The Dutchess Cotton Manufacturing Company* vs. *Davis*, 14 Johns. 238, was a suit on a promise to pay the price of stock subscribed by the defendant. The court, on the authority of *Henriques* vs. *The Dutch West India Company*, 2 Lord Raymond 1535, held that the defendant having entered into a contract with the plaintiffs in their corporate name, thereby admitted them to be duly constituted a body politic and corporate.

The appellant having contracted with the respondent in its corporate name, paid his money to it as an existing living thing in answer to its corporate demands, and from year to year having attended meetings of its stockholders, and voted at elections and upon questions which clearly implied the respondent's existence, he ought to be estopped from denying what he has thus often and so solemnly admitted: *All Saints Church* vs. *Davis*, 1 Hall, N. Y. 191; *John et al.* vs. *Farmers' & Mechanics' Bank of Indiana*, 2 Blackf. 367; *Chester Glass Co.* vs. *Dewey*, 16 Mass. 94.

2. As to the invalidity of the calls. In the examination of the case under the first objection urged to the respondent's right to recover, I think I have shown that the first three calls, as they were ordered by the directors, the validity of whose appointment was not controverted, were subject to no valid objection, although ordered by the board when in session beyond the territorial limits of Illinois. But the alleged invalidity of the fourth call rests upon a total denial of official authority in those who ordered it. This call, as has been seen, was ordered by a board chosen by the stockholders of the company at an election in the city of St. Louis; and it is insisted, on the authority of the case of *Miller* vs. *Ewer*, already cited, that this election, by reason of the place where it was held, was a nullity, conferring no authority whatever on the persons chosen. I am not disposed to question the soundness of that decision in its application to the facts of that case, but I am unwilling to extend the principle there laid down to a case materially differing in its circumstances, as I think the one under consideration does. In that case at the time the obnoxious election was held the corporation had no existence—it had not yet come into being; and, there being neither corporators nor corporation, no valid official authority could be communicated by such election; but in this case, at the time the

election occurred to which objection is made, the corporation was, and for more than a year had been, in full life, exercising all the functions and franchises contemplated by its charter. After the corporation had become full fledged, I see nothing in reason or in principle why the stockholders might not as well elect directors as the directors a treasurer on the Missouri side of the line. The utmost that could be said under such circumstances is, that the election was irregular.

The corporation having been once put into existence, if the members of the board of directors—whether charter members or their appointees, or those elected by the stockholders in St. Louis—accepted their offices and acted under their appointment or election, as the evidence shows was the case, they became directors *de facto*, and their authority to act in behalf of the corporation could not be questioned by the appellant in this, a collateral suit, without showing a judgment of ouster against them in a direct proceeding by the Government for that purpose: *Trust. of Vernon Society* vs. *Hills*, 6 Cow. 23; *All Saints Church* vs. *Lovett*, 1 Hall, N. Y. 198–9; *John et al.* vs. *Farmers' & Mechanics' Bank of Indiana*, 2 Blackf. 367; Ang. & Ames on Corp., 3d ed. 104–5.

I find no error in the record. Let the judgment be affirmed.

BAY, J., concurred.

BATES, J., dissenting.—I hold that this election of directors by the corporators in the city of St. Louis (outside of the state of Illinois) was an absolute nullity: Ang. & Ames on Corp. § 498. The defendant's contract with the plaintiff was that he would pay "in such manner and proportions and times as shall be determined by said company, in pursuance of the charter thereof, and of the preceding resolutions of the board of directors."

The charter vested the corporate powers of the company in the board of directors. The resolution of the board of directors which preceded the subscription of stock, provided that the calls for payments on the subscriptions should be made by the board.

The persons who made the last call were not directors, the pretended election of them being an absolute nullity. There is nothing in the whole case which tends to show that the defendant in any manner, at any time or place, ever recognised them as

directors. He recognised the existence of the corporation, and is estopped from denying it; but he did not recognise those persons as directors, and the acts of other persons, without his consent, cannot bind him.

If I promise to pay money upon the demand of A., I deny that I am bound to pay it upon the demand of B., who falsely claims to be the attorney of A., although B. may have acted as such attorney *de facto* in a great many instances, and may have been recognised as such attorney by a great many very respectable people.

ABSTRACTS OF RECENT AMERICAN DECISIONS.

SUPREME COURT OF THE UNITED STATES.[1]

COURT OF APPEALS OF NEW YORK.[2]

SUPREME COURT OF VERMONT.[3]

SUPREME COURT OF MICHIGAN.[4]

Bills and Notes.

Indorser not notified—Offer to pay or to compromise.—An indorser who had not been legally notified of the dishonor of the paper, made to the assignees of the bank owning it, an offer to pay the amount in the bills of the bank, which were then largely depreciated. The assignees refused to receive this payment. *Held*, that this was to be regarded as an offer to compromise only, and not such an offer to pay as could be construed into a waiver of notice: *Newberry* vs. *Trowbridge*, 13 Mich.

Check.

When an Assignment—Donatio causa mortis.—The holder of a check cannot usually have any claim against the drawers, unless it is accepted. And if it can operate in any case as an assignment of the fund it must be irrevocable, and upon sufficient consideration. A check drawn by a person *in extremis*, designed to operate in lieu of a testamentary instrument, and not paid by the drawer, gave no right of action against the drawer, and could not operate to assign the fund, being revocable and made without consideration. A check of this kind is not valid as a *donatio causa mortis*, and becomes void at the drawer's death: *Second National Bank* vs. *Williams*, 13 Mich.

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[1] From J W. Wallace, Esq., Reporter; to appear in Vol. 2 of his Reports

[2] From Joel Tiffany, Esq., Reporter; to appear in Vol. 1 of his Reports.

[3] From W. G. Veazey, Esq., Reporter; to appear in 36 Vermont Reports.

[4] From Hon. T. M. Cooley, Reporter; to appear in 13 Michigan Reports.